

Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

November 18, 2003

Dear Xxxxx:

This letter is in response to your letter received in August 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please let this letter serve as a request for a letter ruling for a reduced sales tax. The business known as BUSINESS requests sales tax to be recongized at a rate of 1 % instead of the current rate of 7 %. We are requesting this rate for the following reasons:

1. This business has never had any type of seating or counters inside the business for any type of services inside. Furthermore, the CITY in Illinois has a specific site ordinance prohibiting any type of seating inside this facility. And along with this the CITY in Illinois has the square footage limited on this site so any type of expansion is prohibited. This is a small business operation that exists in a residential neighborhood.
2. This business in its present compacity does more than 60 % of its business by selling food to schools, school district officies, and other businesses. This food is in bulk containers as well as coffee cylinders by which the buyers break these items down for their consumption.
- 3 The frozen custard BUSINESS sells is some individual cones but the bulk of this entitiy is sold in quarts and pints that customers purchase and bring home.
- 4 We are requesting this ruling based on part b 3 of Section 130.310. I know we cannot go back and seek refunds but we would greatly appreciate a letter ruling

allowing this business to go to the lower rate of 1 % sales tax or the current lower rate allowed. We have been advised based on conversations with your department that we can start paying the lower rate. They have been very helpful- more helpful than our past accountants who never bothered to look at our business closely.

We are at a point in this business where we are thinking of just folding up. The overhead, labor, and insane hours have just not added up to success. We have always worked hard but at this junction we need a ruling that will reflect the operations of this small business.

5 Any questions please call us.

We are not able to give you a ruling regarding the sales tax rate that you should charge in a General Information Letter. However, we hope that the following information will be helpful.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310.

As you can see at Section 130.310(b)(1), "[a] food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice." Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a).

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final act of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer whose gross sales receipts are derived primarily from sales of individual fudge pieces, soft pretzels, doughnuts, or

cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. (This would include sales of ice cream cones.) The high rate is applicable to all his sales in this instance, including items sold in bulk. See 86 Ill. Adm. Code 130.310(b)(6). However, an ice cream retailer whose gross receipts reflect that a majority of items sold are in bulk, such as boxes of ice cream, should charge the low rate for such bulk sales.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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